

111TH CONGRESS
1ST SESSION

H. R. 856

To provide flexibility for the operation of the Bureau of Reclamation C.W. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant of the State of California in times of drought emergency, to support the establishment of a fish hatchery program to preserve and restore the Delta Smelt in the Sacramento-San Joaquin Delta, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

Mr. RADANOVICH (for himself, Mr. NUNES, Mr. CARDOZA, Mr. CALVERT, Mr. MCCARTHY of California, Mr. ROHRABACHER, Mrs. MCMORRIS RODGERS, and Mr. COSTA) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To provide flexibility for the operation of the Bureau of Reclamation C.W. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant of the State of California in times of drought emergency, to support the establishment of a fish hatchery program to preserve and restore the Delta Smelt in the Sacramento-San Joaquin Delta, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “California Drought Al-
3 leviation Act of 2009”.

4 **SEC. 2. TEMPORARY EXEMPTION DURING DROUGHT EMER-**
5 **GENCIES.**

6 (a) EXEMPTION FOR THE OPERATION OF PUMPING
7 PLANTS DURING DROUGHT EMERGENCIES.—Upon the
8 declaration of a drought emergency by the Governor of
9 California, the Secretary of the Interior shall make a writ-
10 ten determination as to the existence of a drought emer-
11 gency for the service areas of the Central Valley Project
12 and the State Water Project. If the Secretary determines
13 that a drought emergency exists for all or portions of the
14 service areas of the Central Valley Project and the State
15 Water Project, the Secretary shall temporarily exempt the
16 operations of the Bureau of Reclamation C.W. “Bill”
17 Jones Pumping Plant and the State of California Harvey
18 O. Banks Pumping Plant from the prohibitions under the
19 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
20 against take of species listed as endangered species or
21 threatened species or adverse modification of critical habi-
22 tat, until such time as the Secretary determines that the
23 drought emergency conditions are alleviated. For the pur-
24 poses of section 7 of the Endangered Species Act of 1973
25 (16 U.S.C. 1536), the action of pumping water from these
26 plants shall not be considered discretionary.

1 (b) TIME FOR DETERMINATION OF DROUGHT EMER-
2 GENCY.—The Secretary shall make such a determination
3 as to the existence of a drought emergency within the 30-
4 day period beginning on the date of a gubernatorial
5 drought emergency declaration referred to in subsection
6 (a). If the Secretary fails to make such determination
7 within such period with respect to any portion of a service
8 area referred to in subsection (a), the Secretary is deemed
9 to have made a written determination that a drought
10 emergency exists for that portion.

11 (c) REASONABLE AND PRUDENT MEASURES TO PRO-
12 TECT SPECIES.—The Secretary may include in any deter-
13 mination under subsection (a) that a drought emergency
14 exists, reasonable and prudent measures for the protection
15 of an endangered species or its critical habitat. Such rea-
16 sonable and prudent measures, or the failure of the Sec-
17 retary to prescribe such reasonable and prudent measures,
18 shall not impede the ability of the C.W. “Bill” Jones
19 Pumping Plant and the Harvey O. Banks Pumping Plant
20 to supply sufficient water for municipal, industrial, and
21 irrigation uses. The cost of reasonable and prudent meas-
22 ures prescribed by the Secretary under this subsection
23 shall be borne by the United States and shall be nonreim-
24 bursable.

1 (d) NO EFFECT ON OTHER PROJECTS.—In carrying
2 out this Act, the Secretary of the Interior and the Sec-
3 retary of Commerce shall not impose additional prescrip-
4 tions under the Endangered Species Act of 1973 (16
5 U.S.C. 1531 et seq.) or the Federal Power Act (16 U.S.C.
6 791a et seq.) on any other water storage or conveyance
7 facility on the San Joaquin River, the Sacramento River,
8 or their tributaries.

9 **SEC. 3. CONTINUED OPERATION OF C.W. “BILL” JONES**
10 **PUMPING PLANT DURING DROUGHT EMER-**
11 **GENCIES.**

12 If the Secretary of the Interior determines that a
13 drought emergency exists for any portion of the Central
14 Valley Project Service Area in California, the Secretary
15 shall direct the Bureau of Reclamation to operate the
16 C.W. “Bill” Jones Pumping Plant at a capacity consistent
17 with the Coordinated Operation Agreement between the
18 Bureau of Reclamation and the California Department of
19 Water Resources, and consistent with otherwise applicable
20 laws (other than prohibitions under the Endangered Spe-
21 cies Act of 1973 from which the operation is exempt under
22 subsection (a)) and existing water right, until such time
23 as the Secretary determines that the drought emergency
24 conditions are alleviated.

1 **SEC. 4. DELTA SMELT HATCHERY PROGRAM.**

2 The Secretary of the Interior is authorized to enter,
3 and shall seek to enter, into a cooperative agreement with
4 the State of California to support the establishment of a
5 fish hatchery program to preserve and restore the species
6 *Hypomesus transpacificus* (popularly known as Delta
7 Smelt) in the Sacramento-San Joaquin Delta. The hatch-
8 ery program should be designed to establish a sustainable
9 population of *Hypomesus transpacificus* sufficient to war-
10 rant the species' removal from the lists published under
11 section 4 of the Endangered Species Act of 1973 (16
12 U.S.C. 1533) and the State of California Endangered Spe-
13 cies Act. All *Hypomesus transpacificus* maintained, cul-
14 tured, introduced, or reintroduced under the program es-
15 tablished under this section are deemed to be members
16 of any subspecies or population segment of *Hypomesus*
17 *transpacificus* listed under section 4 of the Endangered
18 Species Act of 1973 (16 U.S.C. 1533) for purposes of de-
19 termining whether such subspecies or population segment
20 is a threatened species or endangered species under such
21 section.

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